



November 24, 2003

Department of the Interior
Minerals Management Service (MS 4024)
Attn: Rules Processing Team (Comments)
381 Elden Street
Herndon, VA 20170-4817

Re: RIN 1010-AC57; NPRM Incident Reporting
FR 68-40585

Ladies and Gentlemen:

The Offshore Operators Committee (OOC) appreciates this opportunity to provide written comments on the subject proposed rule to amend regulations regarding the reporting of incidents associated with Outer Continental Shelf oil and gas and other mineral operations as published in the July 8, 2003 Federal Register. OOC is an organization of some 119 producing and service companies who conduct essentially all of the OCS oil and gas exploration and production activities in the Gulf of Mexico. Comments made on behalf of OOC are submitted without prejudice to any member's right to have or express different or opposing views.

In the preamble to the proposed rulemaking, MMS states that they are working with the USCG to implement a single point reporting system that would allow notifications and reports of incidents to be submitted for use by both agencies. **OOC strongly recommends to MMS that this rulemaking be postponed until MMS and USCG can develop and implement a common reporting system for reporting incidents associated with OCS oil and gas and mineral operations.**

Industry personnel have expressed concern to Minerals Management Service (MMS) and U. S. Coast Guard (USCG) over the duplicative and inconsistent incident reporting requirements of MMS and USCG for many years. We have provided comments on appropriate rulemaking initiatives since 1998 on this topic as well as actively participating on a National Offshore Safety Advisory Committee (NOSAC) Subcommittee in 1998 and 1999 formed specifically on incident reporting.

Unfortunately, the currently proposed rulemaking by MMS does not accurately reflect or incorporate many of comments and discussions that have been held to date on incident reporting. We are disappointed that the proposed rulemaking is not a joint rulemaking effort by both MMS and USCG and does not reflect many of the ideas and concepts expressed in the December 16, 1998 MOU between MMS and USCG, nor does it incorporate many of the recommendations from the NOSAC Incident Reporting Subcommittee. In specific, we find that the rulemaking falls short in these areas:

- A single point reporting mechanism for MMS and USCG has not been proposed.
- A single form that meets the requirements of both MMS and USCG has not been proposed.
- Common definitions have not been adopted by MMS and USCG in all cases.
- The preamble to the rulemaking does not have any commitments by MMS (or USCG) to provide incident analysis, trend analysis, safety alerts, and accident investigations in a timely fashion in order to promote safe practices.
- A USCG/MMS team that included stakeholders to focus on the incident reporting process was not established.

We believe that the rulemaking is seriously flawed in several areas that will lead to more confusion than currently exists, and will make complying with the requirements overly burdensome and in some cases, impossible. These areas are briefly summarized below:

- The proposed rulemaking is very prescriptive, complicated and burdensome. Since it is so prescriptive compared to the existing performance based regulations, the proposed rulemaking may actually limit the reporting of certain incidents and the data received. We note that there are six different time frames that reports have to be made in. Also, notifications and reports have to be given to both MMS and USCG using different report forms and reporting means. We fail to understand the purpose or the value of establishing such a complicated system of reporting. In several cases, the lessee or operator cannot possibly have the information available to meet the reporting requirement (for example, the proposed rulemaking calls for an “immediate” notification when an injured person has been hospitalized for more than 48 hours within 5 days of an incident. How can the lessee or operator possibly know “immediately” that this will occur?). We have examined OSHA and DOT (including NTSB) incident reporting requirements for similarities and find that those agencies have much more logical and simplified reporting requirements. In all cases that we looked at, the agency has established a very succinct list of the very serious emergencies that require immediate verbal notification (for example death, multiple in-patient hospitalizations, etc). In some cases, the verbal notification is followed by one written report. Incidents not requiring verbal notification are either recorded, or reported on a scheduled basis (monthly, annually, etc) or reported within a specified length of time after the incident. In no case did we find requirements for verbal notification with various timeframes for different types of incidents or multiple written reports on any single incident. With the exception of separate regulations requiring notification to the same toll free number for the same incident (for example, see 49 CFR 225.9), we also did not find instances of federal agencies requiring multiple reporting to different agencies for the same

incident. We strongly recommend that MMS and USCG develop a joint reporting procedure that is simple, easy to comply with, and provides meaningful data in a timeframe appropriate for the incident. We support the development and adoption of the type of incident reporting system utilized by OSHA where by certain incidents are reported and others are recorded. We believe such a system could be developed jointly by MMS, USCG and industry that would meet the needs of the regulatory agencies, allow them to focus their investigation efforts following incidents on serious incidents, provide the data needed for trend analysis while allowing industry to properly access and investigate incidents in lieu of filing burdensome reports. Please see our detailed comments for specific reporting changes we propose.

- Due to medical privacy issues such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) legislation, and the recently issued implementing regulations found in 45 CFR Parts 160-164, we are seriously concerned that we may not be able to legally divulge the accident information requested for contractors, sub-contractors and other third party individuals under either the current or the proposed regulations. We encourage MMS and USCG to carefully review and analyze the HIPAA legislation and implementing regulations and to align all reporting requirements within that framework.
- MMS and USCG should work together to share incident reports between the agencies as needed. We believe that the formation of a single point reporting mechanism, and the open sharing of incident reports between MMS and USCG, will meet the needs of both agencies for the data collection and to perform incident and trend analysis.
- MMS has stated that they desire consistent data in order to conduct meaningful incident analyses. In many cases, MMS has chosen to adopt USCG proposed reporting requirements for injuries to individuals which are based on reporting requirements for air carriers. While this aligns the MMS and USCG requirements, it does not correlate with OSHA requirements. Therefore, while trend data may be able to be developed for the OCS, it will not facilitate comparative analysis with onshore oil and gas operations or with other industries. We recommend that MMS and USCG compare their requirements with OSHA criteria and utilize OSHA criteria where appropriate. We also note that the data collected under the proposed rulemaking does not correspond well with the wealth of data that has already been collected from the voluntary SEMP performance measures program. Therefore, it will not be possible to do adequate trend analysis for a number of years until a significant amount of consistent data has been gathered and analyzed. Please see our detailed comments for specific recommendations.
- The proposed rulemaking raises serious jurisdictional issues wherein certain vessel incidents are required to be reported to MMS. It is well settled that MMS does not have the jurisdictional authority to require the vessel owner, operator, captain, etc., to report such incidents to them. We support the comments provided by the International Association of Drilling Contractors (IADC). Since MMS lacks this jurisdictional authority, the burden for reporting has been placed on the lessee, the owner or holder of operating rights, etc. In many cases, it is overly

burdensome, and in some cases impossible, for the lessee or operator to collect and report the information from vessels in the manner and timeframe proposed by the subject rulemaking. We request that the rulemaking be postponed until MMS and USCG have worked through all of the jurisdictional issues on reporting and issues a joint proposed rule on incident reporting. Until this can occur, we believe that vessel owners/operators should continue to report incidents to the USCG under their regulations and that lessees/operators should continue to report incidents to MMS and/or USCG in accordance with the appropriate regulations.

MMS states that they need to upgrade their incident data analysis, investigation and information publication functions. However, there are no requirements in the rulemaking for MMS to actually do any of this, nor is there even a mention in the preamble how MMS intends to upgrade their analysis of the data in a timely fashion. Based on the type, quality and timeframe in which performance data has been summarized and released by the MMS, it is not clear how the collection of additional information will be utilized to improve offshore safety. Under the proposed regulation, USCG will be also getting much of the same information. Will the two agencies work together to analyze the data and issue reports to industry and the general public? We note that MMS is currently getting a lot of data through the voluntary reporting of the SEMP performance measures. How is that data being utilized to meet the goal of identifying incident causes and trends and developing strategies for promoting safety on the OCS?

In preparing comments to this rulemaking, we have the general comments contained in this letter and the following attachments:

- Detailed comments on the rulemaking, including proposed alternative language (including Appendix A and A-1, B).
- Specific comments on issues related to the proposed rule as requested by MMS.
- A brief summary of our concerns relating to medical privacy issues.

We recognize that it will require rulemaking by both the USCG and MMS to bring their regulations into alignment with one another. We are willing to work with USCG and MMS to develop such a reporting system. We believe that delaying the rulemaking will have no impact on OCS operations being conducted in a safe and environmentally sound manner. We believe that properly developing an incident reporting system will lead to less confusion for OCS lessees/operators in determining the reporting requirements, will minimize duplication, promote consistent regulation of OCS facilities and assist MMS and USCG to coordinate their respective responsibilities on the OCS as agreed to in the MOU signed on Dec 16, 1998. The incident reporting requirements as currently proposed will not meet those goals and will lead to more confusion. Further, it will be very burdensome on industry, MMS and USCG in preparing, receiving and analyzing the various notifications and reports.

OOC and the oil and gas industry via our comments on incident reporting on MMS proposed Subpart A rulemaking, USCG's Subchapter N rulemaking and our participation on the NOSAC incident reporting subcommittee has been consistent in our comments. We remain convinced that a joint rulemaking effort between MMS and USCG, that

includes the involvement of the regulated stakeholders, will generate the most effective incident reporting system for incidents that occur on the OCS related to oil, gas and mineral operations.

OOC believes strongly that even if MMS incorporates all of our comments and suggested language for this proposed rulemaking effort, that the reporting system and data collection effort will still have flaws that may only be overcome through a coordinated rulemaking effort involving MMS, USCG and industry stakeholders.

If you have any questions, please contact me at 504-561-2427.

Very truly yours,

Original Signed by Allen Verret

Allen J. Verret
Executive Director, Offshore Operators Committee

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USCG Regulations		Proposed Regulation		Comments and Rationale	Proposed Language
		250.105	Definitions <i>Collision</i> means the striking of: (1) An OCS facility by a vessel or helicopter; or (2) Two vessels together where at least one is engaged in OCS activities, regardless of whether one or both vessels are in motion.	We note that the proposed definition of “collision” combines the USCG usage of “collision” and “allison”. This is acceptable provided that neither MMS or the USCG desire to track “collisions” separate from “allisons”.	No proposed changes.
			<i>Fire</i> means the phenomenon of combustion manifested in light, flame, and heat and has the same meaning as in the American Petroleum Institute, Recommended Practice 14G, Third Edition, December 1, 1993. In addition, the term fire as used in this part includes incidents of combustion that involve smoke with no visible flame.	The API RP 14G definition of “fire” has been in use for at least 10 years and if MMS chooses to incorporate it into the regulation, we see no need to modify the definition to add “incidents of combustion that involve smoke with no visible flame.” It is not clear that since “smoke” has been added to the definition, if “ashes” or “fumes” are included as evidences of a fire. Alternatively, we looked at the definition of “fire” in NFPA 901, “Standard Classifications for Incident Reporting and Fire Protection Data, 2001 Edition”, along with the Appendix A Explanatory Material. We believe that this is a good definition of “fire” that was developed specifically for incident reporting and we recommend that MMS utilize this definition in the regulation.	<i>Fire</i> means any instance of destructive and uncontrolled burning, including explosion, of combustible solids, liquids, or gases. Fire does not include the following, except where they cause fire or occur as a consequence of fire: (1) Lightning or electrical discharge (2) Rupture of a steam boiler, hot water tank, or other pressure vessel due to internal pressure and not to internal combustion (3) Explosion of munitions or other detonating material (4) Accident involving ship, aircraft, or other vehicle (5) Overheat condition
			<i>Gas release</i> means any unintentional release of gas at an OCS facility that could, without corrective action, raise hydrocarbon or other gas concentrations to the lower flammable (explosive) limit. Gas releases do not include events where gas is successfully released through	It is not clear how the operator is to determine if an unintentional release could raise the concentration to the LEL limit. Gas detectors are required in certain areas of the platform and if the concentration is raised to the LEL limit in those areas, the platform will be shut-in. While the instances where the gas detectors caused the platform to be shut-in could be reported to MMS,	We recommend eliminating the definition of “gas release” and the subsequent reporting requirements for “gas release” from the proposed regulation.

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USCG Regulations		Proposed Regulation		Comments and Rationale	Proposed Language
			the vent or flare system.	we believe that this will be very burdensome on both industry and MMS and serve no purpose in improving the safety on platforms. We note that we currently don't report other instances of a platform or component being shut in due to a triggered safety device, nor is it proposed in this rulemaking. We fail to understand why this safety device is being singled out for reporting purposes if no incident occurs (which will be report under their the incident requirements.)	
46 CFR 4.03-1	<p>Marine casualty or accident</p> <p>(a) The term <i>marine casualty or accident</i> shall mean any casualty or accident involving any vessel other than public vessels if such casualty or accident occurs upon the navigable waters of the United States, its territories or possessions or any casualty or accident wherever such casualty or accident may occur involving any United States' vessel which is not a public vessel.</p> <p>(b) The term <i>marine casualty or accident</i> includes any accidental grounding or any occurrence involving a vessel which results in damage by or the vessel, it's apparel, gear, or cargo, or injury or loss of life of any person; and includes among other things, collisions, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of gear and equipment</p>		<p><i>Incident</i> means an accident or unexpected event occurring in the course of an OCS activity that affects or is likely to affect operational safety or environmental protection.</p> <p>“Incident” includes the term “casualty” and “marine casualty” used in United States Coast Guard (USCG) regulations.</p>	<p>Clarify the USCG regulations that are referred to. Remove the term “casualty” as it is not defined by the USCG.</p>	<p><i>Incident</i> means an accident or unexpected event occurring in the course of an OCS activity that affects operational safety or environmental protection.</p>

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	and any other damage which might affect or impair the seaworthiness of the vessel. (c) The term <i>marine casualty or accident</i> also includes occurrences of loss of life or injury to any person while diving from a vessel and using underwater breathing apparatus.				
			<i>Loss of well control</i> means either of the following: (1) Uncontrolled flow of formation or other well fluids. The flow may be between two or more exposed formations or it may be at or above the mudline. This includes uncontrolled flow resulting from failures of either surface or subsurface equipment or procedures. (2) Flow of formation or other well fluids through a diverter.	From the Public Meeting held on Sept. 3, 2003, we understand that this definition is intended to include all flows through a diverter, even planned flows through the diverter. Planned well fluid flows through the diverter systems are safely and effectively employed in early drilling operations in the GOM. Since these are planned, they are not unexpected, or uncontrolled flows resulting from failure of equipment or procedures and we do not consider these events to be loss of well control. We recommend that planned flows through the diverter not be considered a loss of well control.	<i>Loss of well control</i> means either of the following: (1) Uncontrolled flow of formation or other well fluids. The flow may be between two or more exposed formations or it may be at or above the mudline. This includes uncontrolled flow resulting from failures of either surface or subsurface equipment or procedures. (2) The unplanned flow of formation or other well fluids through a diverter resulting from failures of either surface or subsurface equipment or procedures.
33 CFR 140.10	<i>Mobile Offshore Drilling Unit or MODU</i> means a vessel, other than a public vessel of the United States, capable of engaging in drilling operations for exploration or exploitation of subsea resources.		<i>Mobile Offshore Drilling Unit (MODU)</i> means a vessel, other than a public vessel of the United States, that is capable of engaging in drilling operations for exploration or exploitation of subsea resources.	While the definitions are similar, we recommend that MMS and USCG use one common definition for MODU.	No proposed changes.
Proposed N 33 CFR 140.25	<i>Mobile Offshore Drilling Unit or MODU</i> means a “vessel”, other than a “mobile inland drilling unit” or public vessel of the United States, that is capable of engaging in drilling operations for “exploration” or				

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USCG Regulations		Proposed Regulation		Comments and Rationale	Proposed Language
	exploitation of subsea resources.				
33 CFR 140.10	OCS activity means any offshore activity associated with exploration for, or development or production of, the minerals of the Outer Continental Shelf.		<i>OCS activity</i> means any activity on the OCS associated with exploration, development, production, transporting, or processing of OCS mineral resources, including but not limited to, oil and gas.		We request that this definition be deleted as it is not required. If that is not acceptable, then we request that MMS adopt the definition in 33 CFR 140.10.
Subchapter N 33 CFR 140.25	OCS activity means any activity that occurs on the “Outer Continental Shelf” and is associated with the “exploration” for, or “development” or “production” of “minerals”.				
33 CFR 140.10	<i>OCS facility</i> means any artificial island, installation, or other device permanently or temporarily attached to the subsoil or seabed of the Outer Continental Shelf, erected for the purpose of exploring for, developing, producing resources therefrom, or any such installation or device (other than a ship or vessel) for the purpose of transporting such resources. The term includes MODU as an OCS facility when in contact with the seabed of the OCS for exploration or exploitation of subsea resources. The term does not include any pipeline or deepwater port (as the term “deepwater port” is defined in		<i>OCS facility</i> means any artificial island, installation, pipeline, or other device permanently or temporarily attached to the seabed, erected for the purpose of exploring for, developing, producing, or transporting resources from the OCS. This term does not include ships or vessels for transporting produced hydrocarbons. A MODU is an OCS facility when it is located on the area covered by a lease, easement, right-of-way, or permit and is engaged in operations related to the exercise of rights under that lease, easement, right-of-way, or permit.		We request that this definition be deleted as it is not required. We note that there are at least three different definitions of “facility” currently within MMS regulations.

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USCG Regulations		Proposed Regulation		Comments and Rationale	Proposed Language
Subchapter N 33 CFR 140.25	section 3(10) of the Deepwater Port Act of 1974). <i>OCS unit</i> means a “fixed facility,” “floating facility,” “MODU”, “MIDU”, or “vessel” engaged in “OCS activities”.				
46 CFR 4.05-1(7)	An occurrence causing property damage in excess of \$25,000, this damage including the cost of labor and material to restore the property to its condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.		<i>Property damage</i> means the cost of labor and material to restore all affected items, including, but not limited to, OCS facilities, vessels, or helicopters, to their condition before the damage. Property damage does not include the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage of an OCS facility, vessel, or helicopter.	There may be instances where the operator may choose to not restore all affected items, such if there is equipment out of service at the time the damage occurred. Or it may not be practical to restore an item back to its condition before the damage and would have to be replaced as “new”. For affected items that are either a total loss for the operator chooses to not restore an item, the fair market value of the item should be used.	<i>Property damage</i> means the cost of labor and material to restore all affected items, including, but not limited to, OCS facilities, vessels, or helicopters, to their condition before the damage or the pre-incident fair market value in the event the affected item will not be restored or replaced. Property damage does not include the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage of an OCS facility, vessel, or helicopter.
33 CFR 146.30 (applies to fixed and floating platforms only, not MODUs or vessels)	(d) Damage costs referred to in paragraphs (b)(3) and (b)(4) of this section include the cost of labor and material to restore the facility to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage of the facility.				
Subchapter N 33 CFR 143.110 (applies to fixed and floating platforms only, not MODUs or	(6) Property damage in excess of \$100,000, including damage resulting from a vessel or helicopter striking the facility. This amount includes the cost of labor and material to restore all affected items, including but not limited to the facility and the vessel or helicopter, to				

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vessels)	their condition before the damage. This amount does not include the cost of salvage, cleaning, gas freeing, drydocking, or demurrage of the facility, vessel or helicopter.				
			<i>Reportable releases of H2S gas</i> means a gas release that results in a 15-minute time-weighted average atmospheric concentration of H2S of 20 ppm or more anywhere on the facility, as defined in 30 CFR 250.490(1).	While we recognize that this is a current requirement in 30 CFR 250.490(1), it is unclear how the operator determines that a 15-minute time-weighted average atmospheric concentration of H2S of 20 ppm or more occurs.	No proposed changes.
33 CFR 140.10	<i>Vessel</i> means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the water.		<i>Vessel</i> means any watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the water. The term “vessel” does not include atmospheric or pressure vessels used for containing liquids or gases.		No proposed changes.
Subchapter N 33 CFR 140.25	<i>Vessel</i> means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the water.				
			<i>Vessel engaged in OCS activities</i> means any vessel that is located within 500 meters of an OCS facility and is engaged in any OCS activity.		We recommend that this definition be deleted as it is not needed.
		§ 250.187	What is the scope of the incident reporting requirements?		
			(a) The reporting requirements in §§ 250.188 through 250.190 apply to incidents that:		
			(1) Occur on the area covered by your lease, easement, right-	We assume that the term “other permit” includes such things as G&G permits	(1) Occur on the area covered by your lease, easement, or right-of-way, or

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			of-way, or other permit; and	granted under 30 CFR 251. Please clarify that lease, etc are granted by MMS.	other permit granted by the MMS on the OCS; and
			(2) Are related to operations resulting from the exercise of your rights under your lease, easement, right-of-way, or permit. This includes incidents involving vessels engaged in OCS activities as defined in § 250.105.	We assume that the if a party has a permit, such as a G&G permit, and incident occurs while exercising the parties right under the permit, that it is the permitting parties responsibility to comply with the reporting requirements, not the lessees/operators. Incident involving vessels engage in the OCS activities should be reported to the USCG under their regulations.	(2) Are related to operations resulting from the exercise of your rights under your lease, easement, right-of-way, or permit.
			(b) You may be required to report incidents described in §§ 250.188 and 250.190 to the USCG under USCG rules. You may use the notifications and reports that you make to MMS under those sections to satisfy USCG incident reporting requirements if and to the extent allowed by USCG regulations.	We strongly encourage MMS and USCG to establish a single incident reporting system. However, if this is not possible, then we recommend that MMS accepts USCG reports when you are required to report to USCG. MMS and USCG should work together to share notifications and reports between the two agencies.	(b) You may be required to report incidents described in §§ 250.188 and 250.190 to the USCG under USCG rules. You may use the notifications and reports that you make to USCG under those sections to satisfy MMS incident reporting requirements.
			(c) Nothing in this subpart relieves you from making notifications and reports of incidents that may be required by other regulatory agencies.		
		§ 250.188	What incidents must I immediately report to MMS, USCG, National Response Center (NRC), or the Responsible Party?		
46 CFR 4.05-1	Notice of marine casualty: Immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest		(a) After aiding the injured and stabilizing the situation, you must immediately make the following oral notifications and written reports for any of the incidents indicated in the	Please see Appendix A for detailed comments. In general, we note that unless a physician or other licensed health care professional is present at the incident site, it is impossible and inappropriate for non-medical	(a) After learning of an incident which results in one or more of the incidents listed in the following, you must immediately make the following oral notifications and written reports...

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<p>33 CFR 146.30 (applicable to fixed and floating facilities only, not MODUs or Vessels)</p>	<p>Marine Safety Office, Marine Inspection Office, or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in (see Appendix A)</p> <p>Notice of casualties (a) The owner, operator, and person in charge of an OCS facility shall ensure that the Coast Guard is notified as soon as possible after a casualty occurs, and by the most rapid means available, of each casualty involving the facility which results in: (See Appendix A) (b) The owner, operator and person in charge shall ensure that the Coast Guard is notified promptly of each casualty involving the facility which results in (see Appendix A) (c) The notice required by paragraphs (a) and (b) of this section must identify the person giving the notice and the facility involved and describe, insofar as practicable, the nature of the casualty and the extent of injury to personnel and damage to property.</p>	<p>following table (please see Appendix A. For ease of comment, the table has been rearranged).</p>	<p>personnel to make the kinds of medical assessments that are necessary in order to meet the “immediate” reporting requirements. Therefore, we suggest changing the requirement to “after learning of an incident which results in one or more of the incidents....”</p> <p>In addition to the USCG requirements, we have also reviewed the accident/incident reporting requirements by DOT for gas pipeline, railroad and aircraft accident/incidents and OSHA injury reporting requirements. We note that the USCG and MMS requirements are far more stringent than any of the federal requirements we reviewed. We have included discussion of these comparisons in our comments in Appendix A.</p> <p>We recommend that one written report 10 days after it has been determined that a reportable incident occurred be submitted. Supplemental reports may be filed when relevant information in obtained that was not previously reported.</p> <p>The preamble of the regulation states “For incidents in the “immediate” category, one or both agencies need to be notified right away because they may need to take one or more of the following actions (1) Be involved in or monitor the ongoing response to the incident; (2) determine if the incident jeopardizes ongoing operational safety and take appropriate action; or (3) initiate an incident investigation.”</p>	<p>Please see Appendix A-1 for the complete revised table proposed by OOC.</p>	
<p>Subchapter N 33 CFR 143.110 (applicable to fixed and floating</p>	<p>When is a notice of casualty required and what must it contain? (a) Immediately after aiding the injured and stabilizing the situation, the owner, operator,</p>				

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facilities only, not MODUs or Vessels)	or person in charge of a fixed facility must notify the Coast Guard of each event on or involving the facility that results in one or more of the following: (See Appendix A) (b) The notice under paragraph (a) of this section must identify the following: (1) The facility involved (2) The owner, operator, or person-in charge of the facility (3) The nature and extent of the injury and damage resulting from the event.			If the operator needs MMS or USCG assistance in the actual response to the incident in (1) above, that notification should be made regardless of the incident reporting requirements.	
			(b) Notifications and written reports made by the owner, agent, master, operator, or person in charge of a vessel will satisfy the reporting requirements for that vessel.	We strongly encourage MMS and USCG to establish a single incident reporting system that is applicable to both facilities and vessels, as appropriate under the regulations. We support the concept of vessel operators providing reports on vessels to the USCG and facility operators giving reports on facilities to MMS through a single reporting mechanism and the two agencies sharing information when appropriate .	We recommend striking this provision.
			(c) Nothing in this subpart relieves the obligation for any vessel that is not engaged in OCS activities to provide notification and reports to the USCG as required by 46 CFR 4.05.		No changes.
33 CFR 146.40	Diving Casualties Diving related casualties are reported in accordance with 46 CFR 197.484 and 197.486			We note the diving casualties are not mentioned in the proposed rulemaking and therefore are not reportable to MMS.	
Subchapter N 33 CFR	How must I report a diving-related casualty?				

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143.120	Diving related deaths and injuries must be reported under 46 CFR 197.484 and 197.486, rather than under 143.110 and 143.115.				
		§ 250.189	What other incidents must I report to MMS?		
			(a) You must submit the following written reports to MMS for any of the incidents indicated in the following table (see Appendix B).	Please see Appendix A-1. We recommend that one written report 10 days after it has been determined that a reportable incident occurred be submitted. Supplemental reports may be filed when relevant information in obtained that was not previously reported.	
			(b) To determine if an injury or illness involves “days away from work,” “restricted work or job transfer,” or “medical treatment beyond first aid,” you should use the recording criteria in the Occupational Health and Safety Administration’s regulations at 29 CFR 1904.7(b)(1)(ii), 1904.7(b)(1)(iii), and 1904.7(b)(1)(iv), respectively.		
		30 CFR 250.190	What reporting procedures must I follow?		
			(a) General procedures.		
			(1) You must submit all written reports electronically.	We note that USCG has not required (or even mentioned) electronic reporting. We recommend that MMS and USCG establish a common electronic reporting system that has been appropriately tested prior to requiring electronic reporting as the only mechanism for submitting written reports. We have the following general	(1) You must submit all written reports by one of the following methods: mail, overnight delivery, courier or personal delivery, fax or e-mail.

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USCG Regulations		Proposed Regulation		Comments and Rationale	Proposed Language
				<p>comments on electronic reporting:</p> <ol style="list-style-type: none"> 1. We are unclear about what “electronic reporting” means. It could be fax, e-mail, interactive website, etc. Until the system is proposed, built and tested, it is difficult to determine the impact on industry and whether or not the system is beneficial to MMS, USCG and industry. We note that an electronic reporting system does not mean simply transmitting a written report by an electronic means. 2. The forms required to be utilized in the proposed rulemaking are not electronically friendly for submittal by any means other than fax. The forms should be redesigned to compliment the method of submittal. 3. The electronic submission system must include a mechanism for the operator to have documentation that MMS and USCG has received the report. 4. The requirement should not be limited to one submission method. It is a high probability that at any electronic system may be unavailable from either the operator or the regulatory body side. 	
46 CFR 4.05-5	<p>Substance of marine casualty notice The notice required in 4.05-1 must include the name and official number of the vessel involved, the name of the vessel’s owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and the extent of injury to persons, and the damage to property.</p>				

**OOO Comments on NPRM 03-16782
Incident Reporting**

USCG Regulations		Proposed Regulation		Comments and Rationale	Proposed Language
		30 CFR 250.190	(2)(i) You must make an oral notification within 24 hours and submit the appropriate written reports for incidents that are not reported, but are later found to be reportable. (ii) You must make the appropriate oral notifications and submit the appropriate reports for incidents that have been reported but are later found to be reportable under a different section or paragraph.	It is unclear if the written reports are due from the date the oral notification is made or from the incident date. Since the report date may have already passed if the incident date is used, we propose using the date that the oral report is made.	(2)(i) You must make an oral notification within 24 hours for incidents that are not reported, but are later found to be reportable. The appropriate written reports must be submitted within the reporting timeframe starting with the date the oral notification is made. (ii) For incidents that have been reported but are later found to be reportable under a different section or paragraph, if an oral report was not previously made, you must make an oral notification within 24 hours for incidents that requires oral notification and you must submit the appropriate written reports within the reporting timeframe starting with the date the oral notification is made.
			(3) MMS District Supervisor may require additional information on a case-by-case basis, if the District Supervisor concludes that the information is needed to determine the cause of the incident.		No changes.
46 CFR 4.05-10	Written report of marine casualty. (a) The owner, agent, master, operator, or person in charge shall, within five days, file a written report of any marine causality required to be reported under 4.05-1. This written report is in addition to the immediate notice required by 4.05-1. This written report must be delivered to a Coast Guard Marine Safety Office of Marine Inspection Office. It must be provided on Form		(4) You must submit written reports on the appropriate forms as indicated in the following table.	See Appendix A-1 for written reports we believe are necessary. We urge MMS and USCG to develop one incident reporting form that can be used for notifications to either or both agencies. The format of the form should consider the method of submitting the report. For injuries, we recommend using the OSHA classifications for consistency in data gathering and statistical comparison across industries.	

**OOO Comments on NPRM 03-16782
Incident Reporting**

USCG Regulations	Proposed Regulation	Comments and Rationale	Proposed Language
<p>33 CFR 146.35 (applicable to fixed and floating facilities only, not MODUs or Vessels)</p>	<p>CG-2692 (Report of Marine Accident, Injury or Death), supplemented as necessary by appended Forms CG-2692A (Barge Addendum) and CG-2692B (Report of Required Chemical Drum and Alcohol Testing Following a Serious Marine Incident). (b) If filed without delay after the occurrence of the marine casualty, the report required by paragraph (a) of this section suffices as the notice required by 4.05-1(a).</p> <p>Written report of casualty. (a) In addition to the notice of a casualty required by 146.30, the owner, operator, or person in charge shall within 10 days of the casualty, submit to the Officer in Charge, Marine Inspection, a written report which: (1) Identifies the facility involved, its owner, operator, and person in charge; (2) Describes the casualty, including the date and time; (3) Describes the nature and extent of injury to personnel and damage to property; (4) Describes the factors which may have contributed to causing the casualty; (5) Gives the name, address and phone number of persons involved in or witnessing the casualty; and (6) Gives any desired comments, especially with</p>		

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USCG Regulations	Proposed Regulation	Comments and Rationale	Proposed Language
<p>Subchapter N 33 CFR 143.115 (applicable to fixed and floating facilities only, not MODUs or Vessels)</p>	<p>respect to use of or need for emergency equipment. (7) Includes information relating to alcohol or drug involvement as specified in the vessel casualty reporting requirements of 46 CFR 4.05-12. (b) The written report required by paragraph (a) of this section may be (1) In narrative form if all appropriate parts of Form CG-2692 are addressed; (2) on Form CG-2692 for casualties resulting in property damage, personnel injury, or loss of life. (c) If filed or postmarked within 5 days of the casualty, the written report required by paragraph (a) of this section serves as the notice required by 146.30 (b)</p> <p>When must I submit a written report of casualty and what must it contain? (a) in addition to the notice of casualty under 143.110, the owner, operator or person in charge of a fixed facility must submit a written report of the event to the OCMI within 10 day after the notice of casualty. The report may be on Form CG-RMAID entitle :Casualty Report of Accident, Injury, Occupational Illness or Death on an OCS unit, Excuding Mobile Offshore Drilling Units,” or in narrative</p>		

**OOO Comments on NPRM 03-16782
Incident Reporting**

USCG Regulations		Proposed Regulation		Comments and Rationale	Proposed Language
	<p>form if it contains all of the applicable information requested in Form CG-RMAID. Copies of Form CG-RMAID are available from the OCMI.</p> <p>(b) The written report must also include the information relating to alcohol and drug involvement required under 46 CFR 4.05-12.</p> <p>(c) The written report of casualty will satisfy the notice requirement under 143.110 if filed immediately after the event.</p>				
			<p>(b) Reporting procedures for incidents listed in § 250.188.</p> <p>(1) If you are submitting reports under § 250.188 to fulfill USCG requirements, you must make a written report for each OCS facility and vessel involved in the incident.</p> <p>(2) You may submit copies of company incident reports to fulfill the Final Report requirement as long as all the information requested by form MMS-142 is included.</p> <p>(3) If you submit a Final Report within the timeframe listed for the Follow-up Report, no additional reporting is required.</p>	<p>We strongly encourage MMS and USCG to establish a single incident reporting system that is applicable to both facilities and vessels, as appropriate under the regulations.</p>	
		250.191	<p>How does MMS conduct incident investigations?</p> <p>Any investigation that MMS conducts under the authority of sections 22(d)(1) and (2) of the Act (43 U.S.C. 1348(d) (1) and</p>		

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Incident Reporting**

USCG Regulations		Proposed Regulation		Comments and Rationale	Proposed Language
			(2)) is a fact-finding proceeding with no adverse parties. The purpose of the investigation is to prepare a public report that determines the cause or causes of the incident. The investigation may involve panel meetings conducted by a chairperson appointed by MMS. The following requirements must be met for any panel meetings involving persons giving testimony.		
			(b) Only panel members and any experts the panel deems necessary may address questions to any person giving testimony.		

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Incident Reporting
Appendix A**

Immediate Oral Notifications

MMS Proposed Regulation Immediately.... If the following incident occurs:	You must make immediate oral notification to:	Comments In many cases, it is impossible to meet the “immediate” notification as we understand it. You have to first determine that the condition exists.	Suggested Change Immediately...After learning that the following incident has occurred:
(1) All incidents resulting in death, except for deaths due to natural causes	MMS USCG	Notification should only be made after the death has been confirmed by a physician. In addition to the USCG requirements, we have also reviewed the accident/incident reporting requirements by DOT for gas pipeline, railroad and aircraft accident/incidents and OSHA injury reporting requirements. Under OSHA requirements in 29 CFR 1904.39, you are required to orally report a work related death within 8 hours, DOT requirements call for immediate oral notification after the company learns of an incident that results in death.	
(2) All incidents involving injuries that result in one or more of the following:	MMS USCG		
(i) Hospitalization of a person for more than 48 hours within 5 days of the incident;		<p>It is impossible for the operator to know “immediately” that a person will be hospitalized for more than 48 hours within 5 days of the incident. We see no point in making an oral notification under these circumstances.</p> <p>The current USCG regulations for fixed and floating platforms allows a written report to be filed within 5 days in lieu of oral notification.</p> <p>We note that the vessel requirements are different from the fixed and floating platform requirements. If vessels and MODUs engaged in OCS activities are required to meet the MMS regulations, then vessel operators will have to maintain multiple recording keeping and notification systems.</p> <p>We note that OSHA does not require an oral report of a single injury requiring hospitalization. In the DOT regulations we reviewed, DOT in some instances requires oral notification of incidents which requires the in-patient hospitalization of an individual.</p>	We recommend removing this requirement from the immediate notification category.
(ii) Fractured bone (other than a		Notification should only be made after the fracture has been	We recommend removing this requirement.

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Appendix A

MMS Proposed Regulation Immediately.... If the following incident occurs:	You must make immediate oral notification to:	Comments In many cases, it is impossible to meet the “immediate” notification as we understand it. You have to first determine that the condition exists.	Suggested Change Immediately...After learning that the following incident has occurred:
finger, toe, or nose);		confirmed by a physician. We note that this is currently not a USCG requirement. We note that OSHA does not require verbal notification for these incidents. In our review of certain DOT regulations, we note that only under the aircraft incident reporting requirements is such an oral notification required.	
(iii) Loss of Limb		Notification should only be made after the loss of limb has been confirmed by a physician. Neither OSHA nor DOT requires verbal notification for these incidents.	We recommend removing this requirement.
(iv) Severe hemorrhaging;		This is impossible to quantify and should be deleted. OSHA does not require verbal notification for these incidents. In our review of certain DOT regulations, we note that only under the aircraft incident report requirements is oral notification required.	We recommend removing this requirement.
(v) Severe damage to a muscle, nerve, or tendon;		This is impossible to quantify and should be deleted. OSHA does not require verbal notification for these incidents. In our review of certain DOT regulations, we note that only under the aircraft incident reporting requirements is such an oral notification required.	We recommend removing this requirement.
(vi) Damage to an internal organ; or		Notification should only be made after the damage to an internal organ has been confirmed by a physician. OSHA does not require verbal notification for these incidents. In our review of certain DOT regulations, we note that only under the aircraft incident reporting requirements is such an oral notification required.	We recommend removing this requirement. The term “damage” is also very vague.
(vii) Evacuation to shore of three or more people		Clarify that it is three or more injured personnel. We note that both the present and proposed Subchapter N regulations have different requirements and that the vessels do not have a similar requirement. OSHA requires the oral notification of in-patient hospitalization of	(vii) In-patient hospitalization of three or more people.

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Appendix A**

MMS Proposed Regulation Immediately.... If the following incident occurs:	You must make immediate oral notification to:	Comments In many cases, it is impossible to meet the “immediate” notification as we understand it. You have to first determine that the condition exists.	Suggested Change Immediately...After learning that the following incident has occurred:
		3 or more workers.	
(3) All losses of well control	MMS		
(4) All fires, explosions, or other incidents that result in property damage greater than \$100,000.	MMS USCG	Impossible in many cases to determine that \$100,000 of property damage has occurred immediately by the personnel at the incident site. Should be reported following an appropriate damage assessment if the criteria is met.	
(5) All collisions to the facility resulting in property damage greater than \$100,000 to the facility	MMS USCG	<p>Impossible to determine that \$100,000 of property damage has occurred immediately.</p> <p>Should be reported following an appropriate damage assessment if the criteria is met.</p> <p>The vessel will report the incident to the USCG in accordance with their regulations.</p> <p>The operator and vessel owner will make separate reports that will in all likelihood have conflicting information.</p> <p>If MMS needs both vessel and facility damage information, they should get the vessel information directly from the USCG.</p> <p>We don't understand the purpose and need for MMS to be notified of two vessels colliding. What will this information be used for? We note these incidents will be reported to the USCG by the vessels.</p> <p>How is the facility operator to determine the amount of damage to a vessel?</p>	
(6) Any incident that impairs the operation of any OCS facility's primary:	MMS USCG	In accordance with the MOU, the USCG has sole jurisdiction over the lifesaving and firefighting systems on a facility. If MMS needs this information, they should obtain it directly from the USCG.	We recommend removing the reporting requirement to MMS.
(i) Lifesaving equipment; or		We assume that does not include operational failure and/or normal wear and tear breakdowns.	
(ii) Firefighting equipment		We assume that this does not include operational failures and/or normal wear and tear breakdowns.	

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Appendix A**

MMS Proposed Regulation Immediately.... If the following incident occurs:	You must make immediate oral notification to:	Comments In many cases, it is impossible to meet the “immediate” notification as we understand it. You have to first determine that the condition exists.	Suggested Change Immediately...After learning that the following incident has occurred:
(7) All reportable releases of H2S gas.	MMS		
(8) All oil spills (per 254.46(a)) which includes:	NRC		
(i) A spill from your facility			
(ii) A spill from another offshore facility; or			
(iii) An offshore spill of unknown origin.			
(9) Oil spills from your facility of one barrel or more (per 254.46(b)) includes:	MMS NRC		
(i) Spills of one barrel or more:			
(ii) Spills of unknown size but thought to be one barrel or more; or			
(iii) Spills not originally reported, but subsequently found to be one barrel or more.			
(10) Oil spills resulting from operations at another offshore facility per 254.46(c)).	MMS and Responsible Party		
(11) Vessels engaged in OCS activities that are involved in the incidents listed in 46 CFR 4.05-1(a)(1) through 4.05-(1)(a)(4).	MMS USCG	It is not clear why MMS needs this information and what action they will take due to the reporting requirement. It is noted that vessel operators are required to report these incidents to the USCG. It is not the responsibility of a lessee/operator to report these incidents to either USCG or MMS.	We recommend removing the requirement.
(12) All releases of hazardous substances in reportable quantities as required by the Environmental Protection Agency regulations at 40 CFR 302.6 Hazardous Substances and reportable quantities are listed at 40 CFR 302.4.	NRC		

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Appendix A**

Written Reports

MMS Proposed Regulation Provide the following written reports If the following incident occurs:	Follow Up (5 days) CG-2692, MMS-142, Sect 1-3	Final (60 days) MMS-142, Sect 1-4	Comments	Suggested Change
			In our review of OSHA and certain DOT requirements, we find that a written report is typically required to be prepared and/or submitted within 7 to 30 days following the incident. In no place do we find any requirement for multiple written reports.	See Appendix A-1 for our recommendations on written reports.
(1) All incidents resulting in death, except for deaths due to natural causes	MMS USCG	MMS		
(2) All incidents involving injuries that result in one or more of the following:				
(i) Hospitalization of a person for more than 48 hours within 5 days of the incident;	MMS USCG	MMS		
(ii) Fractured bone (other than in a finger, toe, or nose);	MMS USCG	MMS		
(iii) Loss of Limb	MMS USCG	MMS		
(iv) Severe hemorrhaging;	MMS USCG	MMS		
(v) Severe damage to a muscle, nerve, or tendon;	MMS USCG	MMS		
(vi) Damage to an internal organ; or	MMS USCG	MMS		
(vii) Evacuation to shore of three or more people	MMS USCG	MMS		
(3) All losses of well control	MMS	MMS		
(4) All fires, explosions, or other incidents that result in property damage greater than \$100,000.	MMS USCG	MMS		
(5) All collisions resulting in property damage greater than \$100,000	MMS USCG	NR		
(6) Any incident that impairs the				

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MMS Proposed Regulation Provide the following written reports If the following incident occurs:	Follow Up (5 days) CG-2692, MMS-142, Sect 1-3	Final (60 days) MMS-142, Sect 1-4	Comments	Suggested Change
operation of any OCS facility's primary:				
(i) Lifesaving equipment; or	MMS USCG	NR		
(ii) Firefighting equipment	MMS USCG	NR		
(7) All reportable releases of H2S gas.	MMS	NR		
(8) All oil spills (per 254.46(a)) which includes:	NR	NR		
(i) A spill from your facility	NR	NR		
(ii) A spill from another offshore facility; or	NR	NR		
(iii) An offshore spill of unknown origin.	NR	NR		
(9) Oil spills from your facility of one barrel or more (per 254.46(b)) includes:	MMS (15 days after spillage stopped)	MMS (spills of >200 bbl)		
(i) Spills of one barrel or more:				
(ii) Spills of unknown size but thought to be one barrel or more; or				
(iii) Spills not originally reported, but subsequently found to be one barrel or more.				
(10) Oil spills resulting from operations at another offshore facility per 254.46(c)).	NR	NR		
(11) Vessels engaged in OCS activities that are involved in the incidents listed in 46 CFR 4.05-1(a)(1) through 4.05-(1)(a)(4).	MMS USCG	NR		
(12) All releases of hazardous substances in reportable quantities as required by the	NR	NR		

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MMS Proposed Regulation Provide the following written reports If the following incident occurs:	Follow Up (5 days) CG-2692, MMS-142, Sect 1-3	Final (60 days) MMS-142, Sect 1-4	Comments	Suggested Change
Environmental Protection Agency regulations at 40 CFR 302.6 Hazardous Substances and reportable quantities are listed at 40 CFR 302.4.				

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Appendix A-1

If the following incident occurs:	You must make immediate oral notification after learning that the incident has occurred to:	And provide the following written report within 10 days to ^{1,3} :
(1) All incidents resulting in death, except for deaths due to natural causes	MMS USCG	MMS USCG
(2) All incidents involving injuries that result in one or more of the following:	MMS USCG	
(i) <i>In patient hospitalization of one or more persons</i> Hospitalization of a person for more than 48 hours within 5 days of the incident:	MMS USCG	MMS USCG
(ii) Fractured bone (other than in a finger, toe, or nose)		MMS USCG
(iii) Loss of limb;		MMS USCG
(iv) Severe hemorrhaging;		
(v) Severe damage to a muscle, nerve, or tendon;		
(vi) Damage to an internal organ; or		
(vii) Evacuation to shore of three or more people		
(3) All incidents not reported under (2) resulting in injuries or illnesses to more than one or more person that involve either		
(i) Days away from work; or		MMS
(ii) Restricted work or job transfer		MMS
(4) All incidents not reported under (2) or (3) resulting in injuries or illnesses to one person that involve either		
(i) Days away from work; or		
(ii) Restricted work or job transfer		
(5) All losses of well control	MMS	MMS
(6) All fires, explosions, or other incidents that result in property damage greater than \$100,000.	MMS USCG	MMS USCG
(7) All fires and collisions and other incidents not reported under (6) and (10) that result in property damage to the facility equal to or less than \$100,000 but greater than \$25,000, excluding those completely contained in the living quarters.		MMS
(8) All fires not reported in (6) or (7) resulting in injuries or illnesses that involve medical treatment beyond first aid to more than one person.		
(9) All other fires not reported under (6)..		MMS
(10) All collisions resulting in property damage greater than \$100,000 to the facility	MMS USCG	MMS USCG
(11) Vessels engaged in OCS activities that are involved in the incidents listed in 46 CFR 4.05 (1)(a)(1) through 4.05 (1)(a)(4).		
(12) All non-weather related incidents <i>not otherwise reported</i> when personnel muster for evacuation and evacuate the facility		MMS
(13) Any incident that impairs the operation of any OCS facility's primary:		
(i) Lifesaving equipment; or		
(ii) Firefighting equipment		
(14) All reportable releases of H2S gas		MMS
(15) Gas Releases		
(16) All oil spills (per 254.46(a)) which includes:		
(i) A spill from your facility;	NRC	
(ii) A spill from another offshore facility; or	NRC	
(iii) An offshore spill of unknown origin.	NRC	
(17) Oil spills from your facility of one barrel or more (per 254.46(b)) includes:		

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Appendix A-1**

If the following incident occurs:	You must make immediate oral notification after learning that the incident has occurred to:	And provide the following written report within 10 days to^{1,3}:
(i) Spills of one barrel or more;	NRC MMS	MMS-15 days after spillage has stopped
(ii) Spills of unknown size but thought to be one barrel or more; or	NRC MMS	MMS-15 days after spillage has stopped
(iii) Spills not originally reported, but subsequently found to be one barrel or more.	NRC MMS	MMS-15 days after spillage has stopped
(18) Oil spills resulting from operations at another offshore facility (per 254.46(c)).	MMS and Responsible Party	
(19) All releases of hazardous substances in reportable quantities as required by the EPA regulations at 40 CFR 302.6. Hazardous Substances and reportable quantities are listed at 40 CFR 302.4	NRC	

¹ Furnishing MMS a copy of the USCG written report will satisfy MMS requirements.

² All instances of USCG only receiving notification or report has been struck from the table.

³ For those circumstances not requiring an immediate oral notification, in lieu of the written report, MMS could require the operator to record the information and submit an annual report summarizing all reportable incidents in lieu of individual incident reports. This would be similar to OSHA's system of reporting certain incidents and recording other incidents. We recommend that MMS work with USCG and industry to implement such a system.

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Appendix B

If the following incident occurs	Provide the following written reports (Proposed Rule)			Comments
	Initial report (within 12 hours) CG-2692 MMS-142, Sec 1-2	Follow up report (within 5 days) MMS-142, Sect 1-3	15-day report MMS-143	
				General: We believe the type of system OSHA uses of reporting certain incidents and recording of other incidents is a better system than that proposed by MMS. This type of system was part of the recommendations from the NOSAC incident reporting subcommittee. We recommend that MMS work with USCG and industry to implement this type of system. One written report on each incident could be provided within an appropriate timeframe, or each company could provide an annual report summarizing their incidents. In either case, this should provide MMS and USCG with appropriate data for trend analysis.
(1) All incidents not reported under 250.188(a) resulting in injuries or illnesses to more than one person that involve either:	X	X		We see no purpose in filing an initial report within 12 hours. OSHA's system only require these incidents to be recorded. One written report to MMS should be sufficient. Please see Appendix A-1.
(i) Days away from work; or				
(ii) Restricted work or job transfer				

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Appendix B

If the following incident occurs	Provide the following written reports (Proposed Rule)			Comments
	Initial report (within 12 hours) CG-2692 MMS-142, Sec 1-2	Follow up report (within 5 days) MMS-142, Sect 1-3	15-day report MMS-143	
(2) All explosions that result in property damage equal to less than \$100,000	X	X		We see no purpose in filing an initial report within 12 hours of the incident. The amount of property damage cannot be determined until a damage assessment has been completed. One written report to MMS should be sufficient. Please see Appendix A-1.
(3) All fires, collisions, and other incidents not reported under 150.188(a) that result in property damage equal to or less than \$100,000 by greater than \$25,000	X	X		We see no purpose in filing an initial report within 12 hours of the incident. The amount of property damage cannot be determined until a damage assessment has been completed. One written report to MMS should be sufficient. Please see Appendix A-1.
(4) All fires not report in 250.188(a) or paragraph (3) of this section resulting in injuries or illnesses that involve medical treatment beyond first aid to more than one person	X	X		We see no purpose in filing an initial report within 12 hours of the incident. OSHA's system only require these incidents to be recorded. One written report to MMS should be sufficient. Please see Appendix A-1.
(5) All incidents not reported under 250.188(a) or paragraphs 1-4 of this section resulting in an injury or illness to one person that involves either			X	
(i) Days away from work				

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Appendix B

If the following incident occurs	Provide the following written reports (Proposed Rule)			Comments
	Initial report (within 12 hours) CG-2692 MMS-142, Sec 1-2	Follow up report (within 5 days) MMS-142, Sect 1-3	15-day report MMS-143	
(ii) Restricted work or job transfer				
(6) All other fires not reported under 250.188(a) or paragraphs 3-4 of this section, excluding those completely contained in the living quarters			X	
(7) Gas Releases			X	
(8) All non-weather related incidents when personnel muster for evacuation			X	We see no reason to file a written report each time personnel muster for evacuation. In many cases, visitors or non essential personnel are required to report to the muster station whenever an alarm is sounded since they have no responsibilities in responding to the alarm. A written report should only be required if personnel were actually evacuated. Please see Appendix A-1.

Medical Privacy Issues

OOC is concerned as to the implications of the current and proposed rule with respect to Federal and State medical right to privacy requirements. Specifically, OOC questions whether or not it is legally permissible and proper to require contractors, sub-contractors and third parties to submit such data to a Lessee. Penalties for improper disclosure range from relative minor civil penalties escalating to criminal and civil penalties of up to \$250,000.00.

We have researched several such privacy requirements and have consulted with outside counsel. In order to keep our comments succinct, we will only concentrate on three (3) such mandates, the Health Insurance Portability and Accountability Act of 1996, Texas Health and Safety Code, Chapter 773 and Louisiana Revised Statute 23:1127. There are numerous other privacy statutes and requirements, which may negatively impact the ability of an employer to provide Individually Identifiable Health Information (IIHI) to the Lessee (Operator).

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, addresses several broad health issues, including privacy requirements that protect medical records and other health information. The U.S. Department of Health and Human Services (HHS) issued implementing regulations, 45 CFR Parts 160-164, with various compliance deadlines, including, with certain limited exceptions, April 14, 2003, as regards the Privacy Rule. HHS's Office of Civil Rights (OCR) administers the privacy considerations. The rule is very confusing as to who is in fact regulated (Covered Entity) and how broad the exceptions are to the disclosure prohibitions. Compounding industry's and government's inability to fully comprehend the import of these regulations is the fact there is a dearth of case law upon which to rely. Violation of the Privacy Rule may subject a company or individual to civil and/or criminal penalties. The civil penalties for privacy standards violations range from \$100.00 to \$250,000.00 depending on the nature and intent of the violation.

Individually Identifiable Health Information (IIHI) is defined as: (1) information that includes demographic information that is a subset of health information; (2) relates to the past, present or future physical or mental health or condition of an individual; and (3) that identifies the individual; or (4) there is a reasonable basis to believe the information can be used to identify the individual (45 CFR 160.103). Generally, this definition includes but is not limited to the name of the person, the social security number, address or other identifying information. Protected Health Information (PHI) is in effect the same as IIHI. It is defined at 164.501 as individually identifiable health information.

As to the scope of the privacy requirements, as we understand it, Lessees and their contractors, subcontractors and third parties are not considered to be Covered Entities. However, medics aboard the rig or platform, shore-side physicians and other recognized healthcare providers are Covered Entities. Accordingly, information received from a rig medic, physician or other healthcare provider as regards the medical condition of an individual is, in all probability, protected by the HIPAA Privacy Rule.

HIPAA's enabling rulemaking does contain a number of exceptions relative to disclosing protected health information, the majority of which is found in 164.512 of the Privacy Rule. An example is an injured or ill person may voluntarily sign a valid Release/Disclosure (release) document to allow for such disclosure. On the surface, this appears to be a relatively simple exercise-it is not. The person must *voluntarily* sign the release form. You may not condition medical treatment or payment for healthcare on an executed form, with very limited exceptions. If the injured or ill person is incapable of signing such a release, a prudent healthcare provider or employer will not release any protected information.

Generally, HIPAA's Privacy Rule does not apply to Workers' Compensation claims. However, this appears to somewhat in dispute, since the rule, at 164.512(l) uses qualifying language ". . .that provide benefits for work-related injury or illness without regard to fault." Individuals employed aboard Mobile Offshore Drilling Units (MODUs) and Offshore Supply Vessels (OSVs) are generally considered Seamen. A Seaman's recovery for work-related injury or illness is in fact reduced for their share of fault, under the doctrine of comparative negligence. We frankly do not know if this language prohibits disclosure of a seaman's IIHI without a voluntary release being properly executed. Additionally, we understand the workers' compensation disclosure exception only extends to the employer of the injured or ill individual. In other words, if a Roustabout working for XYZ Drilling Company is injured while his rig is contracted to ABC Oil and Gas Company, we have been advised the protection afforded by the workers' compensation exception only extends to XYZ, not to ABC.

An additional issue that must be addressed is the unfortunate fact certain incidents that initially are claimed as job-related, upon investigation turnout to be injuries that occur away from the worksite. Such investigations take time, generally beyond the reporting periods specified in the proposed rule.

Another exception that is pertinent is found in 164.512(a), which allows for disclosure of IIHI to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. We are of the opinion this exception will allow a Lessee to disclose IIHI to MMS as required by a final rule relative to **their** employees, due to the direct regulatory relationship between MMS and the Lessee. Conversely, we are of the view contractors, subcontractors and third parties are not afforded protection under this exception since MMS does not have a direct regulatory relationship with these entities.

When disclosures are required under other federal law, IIHI may be disclosed as required by other law. If a disclosure is not required but only **permitted** under other law, an entity must determine whether the disclosure is permissible under HIPAA and then follow HIPAA requirements for making such a disclosure. If another federal law prohibits disclosure that is permitted but not required under HIPAA, entities must comply with the other federal law.

As regards State Laws, the issue of Federal preemption is rather muddled. We understand HIPAA does not in fact preempt state laws when a provision of state law is more stringent than the requirements of the federal Privacy Rule.

Chapter 773 of the Texas Health and Safety Code prohibits disclosure of the identity, evaluation or treatment of a patient. The exceptions codified in Section 773.092 provide that otherwise confidential information may be disclosed under certain circumstances, including to governmental agencies if the disclosure is required or authorized by law. We reiterate our comment as to MMS's only regulatory relationship being over that of the Lessee. Additionally, if a valid Release is executed by the treated individual, disclosure may be made provided the release specifies: (1) the information or records to be covered by the release; (2) the reason(s) or purpose(s) for the release; and (3) the person to whom the information is to be released. Again, we know of no legal basis upon which to condition treatment or payment of medical care on the execution of a release. A person aggrieved by an unauthorized disclosure of confidential information may bring an action for damages against those responsible in addition to obtaining appropriate injunctive relief. The Texas Code would potentially be relevant if treatment was rendered in the State of Texas.

Louisiana Revised Statute (La.R.S.) 23:1127 states that any medical records or information furnished to an employer shall be held confidential and the employer or any party shall be liable to the employee for actual damages sustained by him as a result of the breach of this confidence up to a maximum of \$1,000.00 plus all reasonable attorney's fees necessary to recover such damages. As expected, there are exceptions similar to what is detailed above relative to the State of Texas.

It is clear non-Lessee faces an impossible task complying with the current and proposed incident reporting rules. Granted, it appears all that is necessary is the execution of valid Release/Disclosure form to allow for relevant health information to be forwarded to the Lessee, who in turn will use that information to advise the MMS. That is too simplistic of a perspective. Many individuals are cognizant of their right to medical privacy. Many OOC member companies have experienced difficulty in securing more benign medical release form executions, the majority of which must be effectuated in order to process a workers' compensation or Seaman's claim. It is quite probable injured or ill individuals employed by the Lessee's contractors, subcontractors or a third party will refuse to sign the Release/Disclosure form. MMS must make specific adjustments to the reporting rules to deal with this eventuality.

NPRM Incident Reporting
Request for Comments on Issues Related to the Proposed Rule

1. Should MMS require operators to submit information on the total number of hours worked by their employees and contractors offshore? If so what recommendations do you have for MMS collecting data, and how can we minimize the collection burden?

We believe that the voluntary effort for the reporting of number of hours worked under the OCS Performance Measures program is adequate.

2. What kind of information should MMS collect about contractor performance on the OCS?

We believe that the voluntary effort for the reporting of contractor performance under the OCS Performance Measures program is adequate.

3. What specific incident data analyses could MMS publish to help lessees/operators enhance the safety of their operations?

The publishing of performance data and safety alerts in a timely fashion is the most helpful. For example, the MMS web site has a table which lists OCS Events by Category by year and is kept up to date. However, the last comprehensive report is for the year 2000. It would be more helpful if a comprehensive report could be published during the following year for the previous year. Similarly, we note that since 1997, industry has voluntarily provided data for the OCS Performance Measures which are used to calculate 20 annual, OCS-wide, performance indices. The indices provide the public with information about performance trends, and they allow OCS lease operators to compare their performance with industry "averages." The last report available on the MMS website is through the year 2000. For this information to be the most helpful, it should be published during the following year for the previous year. Old, outdated trend information does industry little good in determining changes that needed to be made or if the changes already implemented have been effective.

4. What kind of electronic reporting methods are most accessible to you as an OCS lessee/operator? What recommendations do you have for developing an electronic system?

An electronic system should recognize the wide variety of reporting mechanisms utilized by operators. Some operators have their field personnel directly report to a regulatory agency, others have either shorebase or office personnel report to a regulatory agency. A wide variety of communication systems will be utilized and the regulations should provide for flexibility in reporting. In some cases and at times, personnel will only have access to a telephone and perhaps a fax machine (this includes shore based personnel after normal working hours). Other personnel will have access to computers and the internet and could utilize an e-mail or a web based system. Any communication system may be non operational at any time on either the MMS or industry side and flexibility in reporting mechanisms must be accommodated. Other considerations include having a verification method for the operator to know that MMS has actually received the report or notification and a method for obtaining a signature for a report or notification. We

also note that simply submitting a form electronically isn't electronic reporting as contemplated under E-gov. If an interactive system is used, we recommend the use of drop down menus and that information be populated from the MMS database to the maximum extent possible (location of a platform, water depth, etc).